

In the event of an interruption in utility services by reason of a breakage or in the event a utility facility becomes exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in remedying the situation. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continuous service have been approved by the local agency having jurisdiction over such facility.

During construction operations, the Contractor shall use special care to prevent damage to all pipes, cables and other underground utility facilities. Any damage done thereto, regardless of location or whether or not the underground facilities are shown on the plans, shall be repaired by the contractor at the Contractor's expense, or if required by the agencies having jurisdiction of such utilities, the Contractor shall arrange for the appropriate utility company to repair the damage at the Contractor's expense.

**7.18 NON-LIABILITY OF PUBLIC OFFICIALS**—In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Director and his authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

**7.19 NON-WAIVER OF LEGAL RIGHTS**—Upon completion of the work, the State will expeditiously make final inspection and, if accepted, will notify the Contractor of acceptance. Such final acceptance, however, shall not preclude or estop the State from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the State be precluded or estopped from recovering from the Contractor or his surety, or both, any overpayment it may have made, or for failure on the part of the Contractor to fulfill his obligations under the contract.

The Contractor shall be liable for latent defects.

## **ARTICLE VIII—PROSECUTION AND PROGRESS**

**8.1 SUBCONTRACTING**—The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or his right, title or interest in the contract without written consent of the Director.

Subject to the provisions of Section 103-29, H.R.S., the Contractor may subcontract a portion of the work but he remains primarily responsible for the work so subcontracted. The Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State.

The Contractor shall perform with his own organization, work amounting to not less than 50 per cent of the total contract cost, except that any items designated in the contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization. Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Before any work is started under a subcontract, the Contractor shall file with and receive the approval of the Director on the form entitled "Request for Approval of Subcontractors."

When any portion of the work which has been subcontracted is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a written notice thereof, shall immediately remove the subcontractor from the project, and the subcontractor shall not again be employed on the project.

No subcontract shall in any case release the Contractor of his liability under the contract and bonds.

Under Section 103-29, H.R.S., the Contractor is required to list the names of persons or firms to be engaged by the Contractor as a joint contractor or subcontractor in the performance of the contract. Thereafter, any change to the list proposed by the Contractor is not permitted except as provided under Section 103-33, H.R.S. When a change in a listed subcontractor is requested by the Contractor for reasons other than those prescribed in Section 103-33, H.R.S., submission of a formal release of the Contractor by the listed subcontractor is required by the State before the substitution will be considered for approval regardless of whether the substitute is another subcontractor or the Contractor himself.

**8.2 NOTICE TO PROCEED**—Upon approval of the contract by the Director, a "Notice to Proceed" will be given the Contractor. The "Notice to Proceed" will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

The Contractor shall begin work within 15 days from the specified date, and he shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall not begin work before the specified date without written approval.

Should the Contractor begin work before receiving the Notice to Proceed, any work performed by him in advance of the specified date will be considered as having been done by him at his volition and at his risk.

If written consent is given to do work in advance of the specified date, the Contractor may begin construction operations, subject to his assumption of the risk that the contract may be disapproved and subject to the following:

- (A) The Contractor shall, on beginning operations, take all precautions required for public safety and shall observe all the provisions in these specifications and the special provisions.
- (B) In the event of disapproval of the contract, the Contractor shall, at his expense, do such work as is necessary to leave the project site in a neat condition to the satisfaction of the Director. If the work done affects any existing road or highway, the Contractor shall at this expense restore it to its former condition, or the equivalent thereof, to the satisfaction of the Director.
- (C) All work done according to the contract prior to its approval will, when the contract is approved, be considered authorized work and will be paid for as provided in the contract.
- (D) The Contractor shall not be entitled to any additional compensation nor an extension of time for any delay, hindrance or interference caused by or attributable to doing the work prior to the date on which the contract was approved by the Director, except to the extent such delay, hindrance or interference would have been compensable had work begun on the date of such approval and the progress thereof been the same as that actually made.

**8.3 INSURANCE AND WORK SCHEDULE**—The Contractor, at his own cost, shall obtain and submit to the Director, within fifteen (15) days from the date of the award of the contract, three (3) copies of the following:

A. Certificate of Insurance from an insurance company or agency, acceptable to the State, showing full policy coverage of the Contractor and the State of Hawaii as additional insured for:

- (1) Workmen's Compensation;
- (2) Comprehensive Automobile Liability and Comprehensive General Liability with the following minimum limits of liability:

Policy Coverage	Limits of Liability		
	Bodily Injury		Property Damage
	Each Person	Each Occurrence	Each Occurrence
Comprehensive Automobile Liability	\$250,000	\$500,000	\$100,000
Comprehensive General Liability	---	\$500,000	\$100,000

B. Insurance and tax rates for:

- (1) Workmen's compensation insurance;
- (2) State unemployment insurance;
- (3) Federal unemployment insurance;
- (4) Social Security;
- (5) Public liability, including personal injury and property damage.

Such insurance and tax rates when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract. All insurance aforementioned shall cover the additional insured for all work performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside of the work area, and all change orders.

The Contractor shall submit within fifteen (15) days from the date of award of the contract a progress schedule for the Director's approval. The Contractor shall show thereon the equipment, labor and time he proposes to utilize in prosecuting the various major divisions of the work and his proposed sequence of operations. He shall also show the relationship of working days to total earnings on the progress schedule.

When requested by the Director, the Contractor shall submit supplementary progress schedules to reflect adjustments in the original progress schedule arising from changes in the progress of the work. The supplementary progress schedule shall show how the Contractor intends to adjust his performance of the work in order to complete the work within the contract time.

The Contractor shall begin work in accordance with the approved progress schedule after receiving the "Notice to Proceed." He shall prosecute the work in the order given in the progress schedule with labor and equipment adequate to complete the major items, portions or sections within the time limit for completion indicated in the schedule. In the event of failure to proceed with the work as rapidly as is provided in the progress schedule, or if it appears at any time that such work is not being prosecuted in a manner that will insure its completion within the time specified, the Director may require the Contractor to furnish and

place in operation such additional labor and equipment as the Director shall deem necessary to bring the work up to the progress schedule. If the Contractor fails to comply, the Director may employ labor and equipment and charge the Contractor for the cost thereof, including depreciation for plant and equipment.

**8.4 LIMITATION OF OPERATIONS**—The Contractor shall conduct the work at all times in such a manner and in such sequence as will assure the least interference with public traffic.

**8.5 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT**—The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these specifications.

All workmen shall have the skill and experience necessary to perform properly the work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or by any subcontractor who, in the opinion of the Director, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Director, be removed forthwith by his employer and shall not be employed again in any portion of the work.

If the Contractor fails to remove such person or persons or fails to furnish suitable and sufficient personnel for the proper prosecution of the work, the Director may by written notice suspend the work until such orders are complied with.

All equipment used on the work shall be of such size and mechanical condition as to produce satisfactory quality of work. Equipment used on any portion of the project shall be of such design that no injury to the roadway, adjacent property or other highways will result from its use.

When the contract does not specify the methods and equipment to be used, the Contractor may use any method and equipment approved by the Director in writing.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Director in writing. The authorization may be on such conditions as the Director may deem necessary. No change will be made in payment for the construction items involved nor in contract time as the result of authorizing a change in methods or equipment under this section.

**8.6 TEMPORARY SUSPENSION OF WORK**—The Director may suspend the work in whole or in part for such period as he may deem necessary for any cause, including (1) unsuitable weather or such other conditions which may prevent proper prosecution of the work, or (2) failure on the part of the Contractor to prosecute or perform the work in strict compliance with the contract. The Contractor shall immediately comply with the written order of the Director to suspend all or part of the work. The suspended work shall be resumed only upon written notice to proceed by the Director.

If the State causes such suspension of work, the State shall assume the cost of eliminating the hazards or, at the Director's option, the State may perform the work at no cost to the Contractor. This provision shall apply only to the portion of the work suspended and shall not apply to the entire project unless the entire project is suspended.

If the suspension of the work is necessitated by any cause not attributable to the State, the Contractor shall, at his own expense, perform all work necessary to eliminate all hazards and inconveniences causing the suspension and repair any damages to the work. In the event the Contractor fails to perform the work as specified herein, the State may perform such work, and the cost thereof shall be paid by the Contractor or may be deducted from the payments

due or to become due the Contractor.

However, immediately before the State assumes the cost of maintenance, the Contractor shall eliminate all hazards and inconveniences and repair all damage to the work which, as determined by the Director, could have been performed by the Contractor prior to the suspension so that all traffic may pass through the work with a minimum of inconvenience and delay. If the Contractor fails to perform this work, the State shall perform the work, and the cost thereof shall be deducted from the payment due or to become due the Contractor under the contract.

If suspension of work is necessitated by a cause not attributable to the Contractor and, as a result of such suspension, the Contractor is unable to proceed with sixty (60) per cent of the normal labor and equipment force engaged in the controlling activity or operation for at least five (5) hours on any working day, the Contractor shall not be charged a working day under the contract. On days when the suspension applies only to non-controlling activities or operations, such days shall be deemed to be working days and shall be charged to the time of completion of the project.

If suspension of work is necessitated by any cause attributable to the Contractor, the days during which the suspension order is in effect shall be deemed to be working days and shall be charged to the time for completion of the work.

The Director's determination of the cause of any suspension shall be final.

**8.7 DETERMINATION AND EXTENSION OF CONTRACT TIME**—When the contract time is on a working day basis, the Director will furnish the Contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The Contractor will be allowed one week in which to file a written protest setting forth in what respect said weekly statement is incorrect. Failure to protest shall be deemed an acceptance by the Contractor of the correctness of the statement.

When the contract time is on a calendar day basis it shall consist of the number of calendar days stated in the contract beginning with the effective date of the Notice to Proceed, including all Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of any orders of the Director to suspend work and to resume work for suspensions not the fault of the Contractor shall be excluded.

When the contract completion time is a fixed calendar date it shall be the date by which all work on the project shall be substantially completed.

The number of days for performance allowed in the contract as awarded is based on the original proposal. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the proposal, the contract time allowed for performance shall be increased on a basis commensurate with the amount and difficulty of the added work.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the contract time as specified or as extended in accordance with the provisions of this Section, he may, at any time prior to the expiration of the contract time, make a written request to the Director for an extension of time setting forth therein the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Director finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion as the conditions justify.

When final acceptance has been duly made by the Director as prescribed in Section

5.12, the daily time charge will cease.

**8.8 FAILURE TO COMPLETE ON TIME AND LIQUIDATED DAMAGES**—The Contractor shall complete the work within the time specified in the contract. The time shall commence from the date indicated in the "Notice to Proceed." If a calendar date is specified as the date of completion, in lieu of the number of calendar days or working days, the work shall be completed by that date.

Completion of the work within the required time is important since delay in the prosecution of the work will inconvenience the public and interfere with business.

If the Contractor fails to complete the work on time, damages will be sustained by the State. Since the amount of damages, exclusive of the actual cost of engineering, inspection and superintendence, including necessary traveling expenses, are difficult, if not impossible of definite ascertainment and proof, damages are hereby agreed upon, liquidated and fixed at the appropriate sum set forth in the Schedule of Liquidated Damages below for each and every working/calendar day which the Contractor has delayed in the completion of the contract; and the Contractor shall pay that amount as liquidated damages and not by way of penalty; and in case the same are not paid, the State may deduct the amount thereof from any monies due or that may become due the Contractor under the contract.

If the work called for under the contract is not finished and completed in all parts and requirements within the time specified, the Director shall, in addition to the right to assess the Contractor liquidated damages, assess the Contractor and deduct from any payment, the actual cost of engineering, inspection and superintendence, including necessary traveling expenses which are directly chargeable to the contract and which accrue during the period of the delay, except that the cost of final surveys and the preparation of final estimates shall not be included in such charges.

**SCHEDULE OF LIQUIDATED DAMAGES**

Total Amount Including Extras Set Up in Contract		Amount of Liquidated Damages	
From More Than	To and Includ- ing	Per Working Day	*Per Calendar Day
\$ 0	\$ 25,000	\$ 42.00	\$ 30.00
25,000	50,000	70.00	50.00
50,000	100,000	105.00	75.00
100,000	500,000	140.00	100.00
500,000	1,000,000	210.00	150.00
1,000,000	2,000,000	280.00	200.00
2,000,000	—	420.00	300.00

\*This schedule to be used only when the work is not completed within the specified number of calendar days.

**8.9 DEFAULT AND TERMINATION OF CONTRACT**—If the Contractor:

- (1) Fails to begin the work under the contract within the time specified in the "Notice to Proceed," or
- (2) Fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of said work, or
- (3) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable,

or

- (4) Discontinues the prosecution of the work, or
- (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7) Allows any final judgment to stand against him unsatisfied for a period of ten (10) days, or
- (8) For any other cause whatsoever, fails to carry on the work in an acceptable manner,

the Director will give notice in writing to the Contractor and his surety of such delay, neglect, or default.

If the Contractor, within a period of ten (10) days after such notice, does not proceed to remedy the delay, neglect or default the State may take any action deemed appropriate. The State may appropriate and use any or all materials and equipment as may be suitable and acceptable and may contract for the completion of the project according to the terms and provisions thereof, or use such other methods as in the opinion of the Director will be required for the completion of the project in an acceptable manner.

All costs and charges incurred by the State, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due to the Contractor had he been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the State the amount of such excess.

**8.10 JUSTIFIABLE CAUSE FOR TERMINATION OF CONTRACT**—In the event of a finding by the Director that a national emergency exists which creates a shortage of materials, labor, or equipment, and that such emergency will probably continue to exist for an unreasonable length of time, by reason of which the Contractor will be unable to proceed with the construction contract, or for any other legally justifiable cause, the State may cancel such construction contract, or any part thereof, under the terms hereinafter provided.

If the contract or any portion thereof is cancelled and the Contractor released before all items of work included in the contract have been completed, payment will be made at contract unit prices for the actual work performed, or agreed prices where no unit price is contained in the contract for any particular item of work. The Contractor shall be reimbursed for such expenditures as in the judgment of the Director are not otherwise compensated for, and as are required in preparing for and moving to and from the work, the intent being that an equitable settlement shall be made with the Contractor. No claim for loss of anticipated profits shall be considered.

Materials obtained by the Contractor for the work that have been inspected, tested, and accepted by the Director, and that are not incorporated in the work, and which have been properly stored and maintained, shall be purchased from the Contractor at actual cost as shown by receipted bills or other proper evidence of actual cost, at such points of delivery as may be designated by the Director.

## **ARTICLE IX—MEASUREMENT AND PAYMENT**

**9.1 MEASUREMENT OF QUANTITIES**—All work acceptably completed under the con-